

REMARKS

Claims 1-5, 8-43, 45-70 and 76-103 are now pending in the application. Claim 104 is added by this amendment. Claim 23 is amended into independent format by this amendment. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

INTERVIEW SUMMARY

Applicants thank the Examiner for the interview granted on April 25, 2008. During the interview, independent Claims 1, 32, 59 and 91 were discussed with the Examiner. In addition, dependent Claims 23 and 24 were also discussed with the Examiner. The claims were discussed in light of the art cited in the currently outstanding rejection.

Applicants believe that an agreement was reached that at least defining a conical portion, as recited in amended Claims 1, 32 and 59, would overcome the rejections in the outstanding Office Action. Applicants' representative and the Examiner reviewed at least Figs. 1A, 2A, and 11 regarding this subject matter. In addition, Applicants respectfully submit that an agreement was reached that the subject matter of at least Claims 23 and 24 also overcome the rejections as currently outstanding. Although an agreement as to allowability of all of the claims was not reached, Applicants respectfully submit that an agreement was reached that if each of the claims is not found to be in condition for allowance, that the Examiner would contact Applicants' representative prior to any further Office Actions.

REJECTION UNDER 35 U.S.C. § 103

Claims 1-5, 8-9, 12-17, 19-21, 23-24, 32-35, 40-44, 46-48, 50-51, 59-63 and 67 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Allen (U.S. Pat. No. 5,397,329) in view of Vilsmeier (U.S. Pat. No. 6,351,659), and further in view of Kraus (U.S. Pat. No. 3,918,440). Claims 18, 37-39, 45 and 91 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Allen in view of Vilsmeier and Kraus, and further in view of Reed (U.S. Pat. No. 5,968,047). Claims 91 and 93 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Allen in view of Vilsmeier and Kraus, further in view of McCrory et al. (U.S. Pat. No. 6,333,971). Claims 31 and 58 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Allen in view of Vilsmeier and Kraus, further in view of Franck et al. (U.S. Pat. No. 6,273,896). These rejections are respectfully traversed.

Claim 1 has been amended to recite, "a conical receptacle that is sized and shaped for engaging a locator instrument of a positioning system, the receptacle integrated with the imagable fiducial locator head and wherein the conical receptacle is configured with a base at an edge defined by an exterior surface of the locator head and a substantially continuously sloping wall to an apex at a center of the locator head to permit access to a center of the imagable fiducial locator head." Claim 32 has been amended to recite, "a conical receptacle that is sized and shaped for engaging a locator instrument of a positioning system, the receptacle integrated with the imagable fiducial locator head and configured to permit access to a center of the imagable fiducial locator head wherein the conical receptacle has a base at an edge of a surface of the fiducial location head and a substantially continuously sloping wall to an apex of the conical

receptacle.” Claim 59 has been amended to recite, “providing a substantially continuous wall from an edge defined by a surface of the locator head to the apex of the conical receptacle.” Applicants submit that support for these amendments can be found throughout the application as filed, including Figs. 1A, 2A, and 11. Also, the subject matter is described at page 7, Ins. 18-28; page 10, Ins. 30-31; and page 21, Ins. 5-13. As discussed with the Examiner, Applicants submit that independent Claims 1, 32, and 59, along with their respective dependent claims, are both supported by the application as filed and have been amended into condition for allowance.

Claim 91 has been amended to recite, “an imagable plug, sized and shaped to fit within the receptacle.” As discussed with the Examiner, Applicants respectfully submit that none of the references cited in the rejection disclose “an imagable plug, sized and shaped to fit within the receptacle,” which is similar to the subject matter of previously pending Claim 12. Allen, as discussed in prior amendments, is directed to a fiducial implant system that includes a fiducial implant 10 having a first imagable portion 12 and a second connection portion 14 for connecting to a patient. Applicants respectfully submit, however, that Allen does not disclose or reasonably render obvious an imagable plug. Vilsmeier is directed to a navigation system having a landmark prominence 80 that is operable to be interconnected with a fastener 90. Kraus is directed to a bone growth stimulation device with a locking element to fit within a socket to deliver electrical current. Reed is directed to a fixation device for holding an implant in place. McCrory et al. is directed to a fiducial marker. McCrory et al. does not disclose at least a substantially spherical imagable fiducial locator head, a receptacle to permit access to a center of the imagable fiducial locator head, or an imagable plug sized and shaped to fit

within the receptacle. Applicants respectfully submit, therefore, that Reed, Allen, Vilsmeier, Kraus, or McCrory et al., alone or in combination, do not anticipate or fairly render obvious an imagable plug as recited in independent Claim 91. Accordingly, Applicants respectfully submit that amended independent Claim 91, along with its respective dependent claims, are in condition for allowance.

New Claim 104, which depends from independent Claim 91, has been added to recite "the receptacle includes a substantially continuously sloping wall to an apex at a center of the fiducial locator head from a base at an edge defined by a surface of the fiducial locator head." As discussed with the Examiner, Applicants respectfully submit that new Claim 104 includes allowable subject matter in light of the art cited in the rejections. Accordingly, Applicants respectfully submit that new Claim 104 is also in condition for allowance.

In light of the interview with the Examiner and the claims as amended in the current amendment, Applicants respectfully request that the Examiner withdraw each of the presently outstanding rejections and allow each of the claims that is not presently allowed.

Applicants also note that most of the references cited in the rejection have also been discussed in prior amendments and Applicants do not reiterate or repeat prior submitted arguments here, but incorporate by reference all prior arguments.

ALLOWABLE SUBJECT MATTER

The Examiner states that claims 10-11, 22, 25-30, 36, 49, 52-57, 64-66, 68-70, 76-90 and 94-103 are allowed.

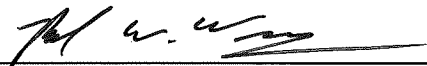
Applicants thank the Examiner for the indication of allowance of Claims 10-11, 22, 25-30, 36, 49, 52-57, 64-66, 68-70, 76-90 and 94-103.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: May 5, 2008

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